

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

MERCHANT CAPITAL, LLC and	)	
NEW SUNSHINE, LLC,	)	
	)	
Plaintiffs,	)	
	)	
	)	CAUSE NO.: 1:13-cv-00873-JMS-DML
v.	)	
	)	
MELANIA MARKS SKINCARE, LLC,	)	
	)	
Defendant.	)	

**PLAINTIFFS MERCHANT CAPITAL, LLC AND NEW SUNSHINE, LLC’S ANSWER  
TO MELANIA MARKS SKINCARE, LLC’S COUNTERCLAIMS**

Plaintiffs Merchant Capital, LLC (“Merchant Capital”) and New Sunshine, LLC (“New Sunshine”) (collectively “Plaintiffs”), by counsel, for their Answer to Melania Marks Skincare, LLC’s Answer and Counterclaims, state the following:

**COUNTERCLAIMS AGAINST NEW SUNSHINE, LLC**

48. New Sunshine denies that it did in fact “enter into” the License Agreement, for the reasons stated in its Amended Complaint. New Sunshine admits that Exhibit D to the Amended Complaint is the “Agreement” at issue in this case, and that Eric Weber, the Hilberts, and Defendant signed the “Agreement” on November 1, 2012.

49. New Sunshine denies the allegations contained in Paragraph 49 of Defendant’s Answer and Counterclaims.

50. New Sunshine generally admits that the License Agreement contains an arbitration provision. However, as to the exact language of any such provision, New Sunshine states that the provision speaks for itself, and therefore denies the allegations contained in Paragraph 50 of Defendant’s Answer and Counterclaims.

51. As the allegations contained in Paragraph 51 of Defendant's Answer and Counterclaims call for a legal conclusion, they are denied.

52. As the allegations contained in Paragraph 52 of Defendant's Answer and Counterclaims call for a legal conclusion, they are denied.

WHEREFORE, Plaintiffs Merchant Capital, LLC and New Sunshine, LLC respectfully pray that Defendant takes nothing by way of its Counterclaims, that judgment be entered in favor of Plaintiffs Merchant Capital, LLC and New Sunshine, LLC, and for all other just and proper relief in the premises.

**COUNTERCLAIMS AGAINST MERCHANT CAPITAL, LLC**

53. Merchant Capital incorporates by reference the response to the allegations contained in Paragraph 48 of Defendant's Answer and Counterclaims.

54. Merchant Capital denies the allegations contained in Paragraph 54 of Defendant's Answer and Counterclaims.

55. Merchant Capital admits the allegations contained in Paragraph 55 of Defendant's Answer and Counterclaims.

56. Merchant Capital denies the allegations contained in Paragraph 56 of Defendant's Answer and Counterclaims.

57. Merchant Capital denies the allegations contained in Paragraph 57 of Defendant's Answer and Counterclaims.

58. Merchant Capital denies the allegations contained in Paragraph 58 of Defendant's Answer and Counterclaims.

59. Merchant Capital denies the allegations contained in Paragraph 59 of Defendant's Answer and Counterclaims.

60. Merchant Capital denies the allegations contained in Paragraph 60 of Defendant's Answer and Counterclaims.

61. Merchant Capital denies the allegations contained in Paragraph 61 of Defendant's Answer and Counterclaims.

WHEREFORE, Plaintiffs Merchant Capital, LLC and New Sunshine, LLC respectfully pray that Defendant takes nothing by way of its Counterclaims, that judgment be entered in favor of Plaintiffs Merchant Capital, LLC and New Sunshine, LLC, and for all other just and proper relief in the premises.

### **AFFIRMATIVE DEFENSES**

Plaintiffs Merchant Capital, LLC and New Sunshine, LLC, by counsel, for their Affirmative Defenses to Defendant's Answer and Counterclaims, states the following:

1. Defendant's Counterclaims fail to state a claim upon which relief may be granted.
2. Defendant's Counterclaims are barred by fraud, as set forth in the Amended Complaint.
3. Defendant's Counterclaims are barred by the doctrine of self-dealing.
4. Defendant's Counterclaims are barred by the doctrine of corporate waste.
5. Defendant's Counterclaims are barred by the doctrine of gross mismanagement.
6. Defendant's Counterclaims are barred by the doctrine of unclean hands.

Plaintiffs Merchant Capital, LLC and New Sunshine, LLC reserve the right to assert affirmative defenses which become known in the course of discovery and investigation.

Respectfully submitted,

/s/Jerry M. Padgett

Jerry M. Padgett (#27282-49)

One of the Attorneys for Plaintiffs,  
*Merchant Capital, LLC and New Sunshine,*  
*LLC*

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of July, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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/s/ Jerry M. Padgett

Jerry M. Padgett